IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 628 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI KODARBHAI PARMAR

Versus

HARIJAN VALAJIBHAI BHANABHAI

Appearance:

1. Criminal Revision Application No. 628 of 1999

MR YN RAVANI for Petitioner No. 1

MR HARIN P RAVAL for Respondents No. 1-2

RULE SERVED for Respondents No. 1-2

Mr K G Sheth, APP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/02/2002

ORAL JUDGEMENT

This is a revision application filed under section 397 read with section 401 of the Code of Criminal

Procedure, 1973 (for short, 'the Code') by the original complainant challenging the judgment and acquittal order dated 25.10.1999 acquitting the contesting respondents No.1 and 2 from offence punishable under section 332 of IPC in criminal case No.1917/89. The facts leading to the above case may be briefly stated as follows:

2. That the present petitioner was working as a Public Servant in a School at Rajpur village in Taluka Kadi of Mehsana District. The incident in question took place on 5.10.1989 at about 12.30 p.m. The petitioner was on duty as a public servant and at that time, the present contesting respondents went to the school for collection of rent. The said respondents were owners of the building which was let to the above institution for running the said school. At that time, the petitioner told them that an amount of Rs.400/- towards rent was paid last by him and therefore, the contesting respondents should first part with the receipt. At that time, according to the case of the petitioner, the contesting respondent got angry and respondent no.1 had caused injury to the petitioner and respondent no.2 had given a stick blow on the left leg of the petitioner. That the petitioner fell down from the chair and he had sustained injuries. One Devjibhai Motibhai, Assistant Instructor of the said School was also present and he intervened and thereafter FIR was filed, medical treatment was taken and at the conclusion of investigation, charge was framed under section 323 of the Code. At the first instance, the present petitioner approached the Sessions Court and obtained an order from that Court that the charge of offence under section 332 of IPC should be added. Accordingly charge was added and the trial proceeded ahead. At the end of the trial, learned Magistrate found that the prosecution had not proved the charge and, therefore, he recorded an order acquitting present respondents No.1 and 2 from the said charge by the aforesaid judgment and acquittal order.

3. Feeling aggrieved by the said judgment and acquittal order, the petitioner has preferred this revision. It has been contended by the petitioner that there was sufficient evidence to hold the contesting respondents guilty and yet the courts below had illegally acquitted the contesting respondents. It is further contended that the trial court has committed serious illegality in closing the evidence of the prosecution. That the trial court has wrongly depended upon the minor discrepancy and contradictions in the evidence. That on the whole, the judgment and acquittal order are illegal and deserve to be set aside. It is therefore, prayed

that the present revision be allowed, the judgment and order of the trial court be set aside and the matter may be remanded for re-trial according to law.

4. Rule was issued. Mr H P Raval, learned Advocate appears for respondents no.1 and 2 and Mr K G Sheth, learned APP appears for the State. I have heard the arguments advanced by the learned Advocates for the parties and have perused the papers. It may be incidentally stated that the State has not preferred acquittal appeal against the aforesaid judgment and acquittal order of the learned Magistrate. It may be noted that learned APP Mr K G Sheth has supported the judgement and has argued that the learned Magistrate was justified in acquitting the contesting respondents. Learned Advocate for the petitioner has argued the matter to a very great extent. It has been mainly contended that the court below had committed illegality in appreciation of evidence and, therefore, according to the arguments of the learned Advocate for the applicant, the judgment and order of the trial court are illegal and perverse and deserve to be set aside.

5. On going through the judgment of the trial court, it is found that evidence of the original informant-Govindbhai Parmar Exh.43 has been dealt with by the trial court in para 13 of the judgment. There it has been observed that the petitioner was approached by the respondents and rent was demanded. That at that time, the petitioner demanded receipt of the previous amount of rent paid by the petitioner to the contesting respondents, at which the contesting respondents got angry and started scuffle with the petitioner.

6. At this point, it has to be taken into account that the monthly rent is Rs.492/- and the petitioner demanded previous rent receipt of Rs.400/-. Now if the monthly rent is Rs.492/-, then it is not explained or understood as to why the petitioner previously paid a monthly rent of Rs.400/- to the contesting respondents. Another aspect of the case is that after all this was a Government institution and therefore, the rent would be paid only on receipt and not otherwise. Therefore, if the petitioner had paid an amount of Rs.400/- as rent to the contesting respondents, then, he would have certainly obtained receipt of payment itself. Receipts would not be differred in case of Government payment. No Government amount would be permitted to be paid without getting receipts. Even at times Government would insist on advance receipts. In any case, it is difficult to accept that the petitioner had paid rent of Rs.400/- to

the contesting respondents and had not obtained receipt and, therefore, the petitioner demanded receipt for payment of the said amount of Rs.400/-. In that view of the matter, the entire episode based on the demand of receipt does not appear to be genuine and hence is not acceptable.

7. Then, we can turn to the medical evidence which shows that there was swelling on the leg of the petitioner. It is a matter of allegation that the petitioner was hit by a stick by respondent no.2. Now if the stick was hit, naturally it would have been hit with force and in that event, there would have been some external mark of injury on the person of the petitioner where the stick was hit. Medical evidence shows that there was no external mark of injury and there was only swelling on the leg of the petitioner. Absence of injury mark will clearly rule out the possibility of a stick blow by respondent no.2 on the person of the petitioner. In other words, evidence of the petitioner that respondent no.2 had dealt a stick blow on his leg by means of a stick is not supported by medical evidence. In that view of the matter, it is difficult to accept the testimony of the petitioner though it is supported by the evidence of Devjibhai Motibhai.

8. Then comes the evidence of Laxmiben Devjibhai Exh.63. She has given some evidence about another incident which took place between the contesting respondents and minor son of the witness and the witness herself. It is a separate episode and by and large, it is not much in dispute that the said episode has absolutely no connection with the injury being received by the petitioner-Govindbhai Kodarbhai.

9. Even otherwise, if the contesting respondents had anything wrong with Laxmiben Devjibhai, then Devjibhai was present when the petitioner was allegedly beaten up by the contesting respondents. In that event, the contesting respondent would have beaten Devjibhai also. However, Devjibhai, Exh.68 had not been beaten at all. This shows that there was no enmity between the contesting respondent and Devjibhai and, therefore, the episode of Laxmiben Devjibhai Exh.63 and her minor son had absolutely no bearing on the case of the petitioner Exh.43. Therefore, these two episodes cannot be amalgamated and the contesting respondents cannot be convicted for causing injury to Laxmiben Exh.63 and her minor son.

9. Devjibhai, Exh.68 has gone to the extent of

saying that when the episode started between the petitioner and the contesting respondents, he (Devjibhai) went to the police station and when no police was present in the station, he went to a nearby Dairy to give telephonic message. There the dairy was also closed. So he went to the School. The trial court has observed that it was difficult to accept that there was nobody present at the police station. When the police station has been established in accordance with the provisions of the Criminal Procedure Code of 1973, then normally one Head Constable remains on duty round the clock for receiving telephonic message or for receiving FIR. Even sometimes, the persons come with information of non-cognizable offence and that has also to be recorded by the Head Constable on duty. Therefore, the trial court was justified in observing that it was not acceptable that there was nobody present in the police station. Even otherwise, the trial court has appreciated evidence of the aforesaid three witnesses and if those witnesses are not found reliable, then there is no further evidence to show that the contesting respondents were guilty of offence punishable under section 332 of IPC.

10. Learned Advocate for the petitioner has argued that the dispute started from the collection of rent and, therefore, the petitioner was on duty. As stated above, there is nothing on record to show that the episode started on the acceptance of the amount of rent. Even otherwise, as stated above, the entire episode of demand of rent receipt is not acceptable. Even if we take it as that the petitioner was on duty, then also the actual causing of injury to the petitioner at the hands of the contesting respondents is found to be doubtful by the trial court and there is no reason to disbelieve the said findings of the trial court.

11. After all this finding of fact has been recorded by the trial court on appreciation of evidence and no illegality has been shown in the matter of appreciation of evidence and, therefore, it would be difficult to re-appreciate the evidence for the purpose of remanding the case to the trial court. The trial court has considered that there was much delay in the commencement of the proceedings and, therefore, the respondents would be entitled to appropriate orders in accordance with the directions of the Supreme Court in the case of Common Cause, a Registered Society v. Union of India, reported in AIR 1996 SC 1619. However, even if we ignore those aspects and consider the evidence, then also the fact remains that the evidence on record is not free from doubt and, therefore, the trial court was justified in

not placing reliance on the same. In that view of the matter, I am of the opinion that this is not a fit case for interference at this level by this Court which exercising criminal revisional jurisdiction wherein the power, function and jurisdiction are very limited. This Court cannot lightly brush aside the findings of fact recorded by the trial court unless they are found to be illegal and perverse and are found to be against the weight of evidence and, therefore, there is no merit in this revision application and the same deserves to be dismissed.

This revision application is accordingly dismissed. Rule discharged.

19.2.2002 [D P Buch, J.]
msp